

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

15243

Brown
PLMHL

FILE: B-198115

DATE: October 21, 1980

MATTER OF: *Claim for* Refund of life insurance premiums]

- DIGEST:
- (1) Employee, who was serving under temporary appointment and who was ineligible for Federal Employees' Group Life Insurance under the provisions of 5 C.F.R. 870.202(a)(1), may be refunded insurance premiums which were withheld from his salary due to administrative error. Employee was never covered by life insurance and could not have received any benefits.
 - (2) Employee who elected regular life insurance but waived optional coverage may be refunded optional insurance premiums which were deducted from his salary due to administrative error. Since declination of optional coverage was never canceled, employee was never covered by optional insurance and could not have received benefits from it.
 - (3) Federal employee, who had waived life insurance during first appointment, elected both regular and optional insurance upon reinstatement but failed to cancel earlier waiver. Under applicable regulations, waiver is effective until canceled. Thus, employee was never insured and could not have received benefits. Premiums may be refunded.

By a letter dated March 13, 1980, Mr. H. Larry Jordan, an authorized certifying officer with the National Finance Center, United States Department of Agriculture, asked

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three questions concerning the conditions under which an employee is due a refund of life insurance deductions made from his salary. Specifically Mr. Jordan inquired whether he might certify vouchers for the refund of premiums for Federal Employees' Group Life Insurance which were withheld under the following circumstances:

- "1. Employee had temporary appointment rendering him ineligible for regular life insurance. Administrative error resulted in deductions which continued for 18 pay periods.
- "2. Employee elected regular life insurance but waived optional coverage. Administrative error resulted in deductions for both regular and optional insurance which continued for 41 pay periods.
- "3. Employee waived life insurance when employed in 1968. He was separated and subsequently reinstated to a career appointment in 1972. Upon reemployment, he elected regular and optional insurance but did not take appropriate action to cancel the waiver from his 1968 appointment."

Under the Federal Group Life Insurance Act of 1954, as amended, 5 U.S.C. §§ 8701-8716, the Office of Personnel Management may issue regulations which prescribe the time at which and the conditions under which an employee is eligible for coverage. These regulations are found at 5 C.F.R. §§ 870.101 - 871.604, Federal Personnel Manual (FPM) Chapter 870, and FPM Supplement 870-1.

With regard to the employee in example 1 above, 5 C.F.R. 870.202(a)(1) specifically excludes employees who are appointed for one year or less from coverage. Therefore, the employee was ineligible for insurance and could not have received any insurance benefits notwithstanding that premiums were erroneously deducted from

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his pay. Paragraph S4-7b of FPM Supplement 870-1 states that errors in withholdings involving current employees should be adjusted in subsequent pay periods. If the individual is currently employed, erroneously withheld premiums should be refunded in this manner. If his employment has been terminated, the refund should be made in accordance with paragraph S4-7c by adjustment to his final pay.

With regard to the employee in example 2, since the employee properly waived the optional coverage, he was never entitled to the benefits of optional insurance. In this regard paragraph S2-3 of FPM Supplement 870-1 provides that a properly executed declination of optional insurance, once received in the employing office and made effective, remains in effect until canceled. We permitted the refund of life insurance premiums which were withheld from the salary of an employee who had earlier executed a waiver of regular insurance coverage in B-151443, May 27, 1963, stating:

"Since a waiver of life insurance coverage is effective until the proper procedures for its cancellation * * * are followed and since [the employee] has never complied with the requirements for such cancellation, he was not covered by the Federal Employees' Group Life Insurance during the period in question and should not have had deductions made from his compensation."

Since a declination of optional insurance is similar in effect to a waiver of regular insurance coverage, the employee in example 2 should be refunded the optional premiums deducted from his pay.

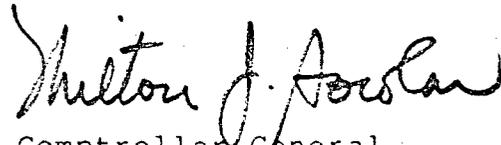
With regard to the employee in example 3; we note that the waiver of life insurance coverage executed in 1968 extended to both regular and optional life insurance. FPM Supplement 870-1 states at paragraph S2-3e:

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- "(1) A properly executed waiver of regular insurance or a declination of optional insurance, once received in the employing office and made effective, remains in effect until canceled, even though the employee may transfer to another agency or be reappointed after a break in service.
- "(2) When hiring an employee who has previously worked* * * If the employee has an uncanceled waiver of regular insurance outstanding, he or she cannot be insured until the waiver is canceled." (emphasis added)

Thus, the employee in example 3 was not covered by life insurance and would not be liable for premiums during the period in question. B-161401, August 15, 1967. Consistent with the above-cited holding in B-151443, the erroneously withheld premiums for regular and optional insurance should be refunded. Accordingly, the vouchers may be certified for payment, if otherwise proper.

Regarding the certifying officer's concern that the three employees may have been partly at fault with respect to the erroneous withholdings in failing to report the deductions indicated on their earnings statements, we point out that these cases do not involve overpayment that may be waived under 5 U.S.C. § 5584 only when the employee is without fault. In contrast to these three cases in which the employees have been underpaid, Jack A. Shepherd, B-193831, July 20, 1979, and the line of decision cited therein involved employees who elected insurance coverage and who were overpaid by virtue of the fact that premiums were not deducted from their pay.



For the Comptroller General
of the United States